

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN S. PENROD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 07-cv-02-JPG

MEMORANDUM AND ORDER

This matter comes before on petitioner John S. Penrod (“Penrod”) motion for production of documents (Doc. 6), which the Court denied in a previous order (Doc. 7). In this § 2255 proceeding, Penrod seeks to show that his trial counsel was constitutionally ineffective for failing to adequately impeach several adverse witnesses at trial with their prior statements. The government has responded by arguing that counsel’s cross examination was adequate. In the pending motion, Penrod seeks the prior statements of the witnesses in order to prepare a reply to the government’s response. Because the Court had security concerns about ordering counsel to provide written statements of government witnesses to a prison inmate, the Court ordered the government to submit to the Court the pretrial statements of Robert Barber, Lawrence Bryant and James Suggs *ex parte* for *in camera* review.

The government has filed those documents, and the Court has carefully reviewed them, comparing them with the witnesses’ trial testimony, to see whether the witnesses’ statements could have been used to impeach the witnesses’ testimony in any additional way not already used by counsel at trial. It appears that Penrod has already identified in his motion the relevant information from the witnesses’ statements and that having those statements in his possession would add nothing to his already well-presented argument. To the extent that other

discrepancies exist between the witnesses' statements and their testimony, they are trivial and hold no possibility of supporting Penrod's argument that his trial counsel was ineffective.

Accordingly, the Court finds that Penrod has not demonstrated good cause for discovery of the requested documents, *see* Federal Rule 6(a) Governing § 2255 Proceedings, and reaffirms its denial of the motion for production of documents (Doc. 7). The Court **ORDERS** that Penrod shall have up to and including November 30, 2007, to submit a reply brief.

IT IS SO ORDERED.

DATED: November 13, 2007

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE